IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 29981 of 2006(T)

PETITIONER:

K.V.VIJAYAN,
CONVENER, AROGYA SAMRAKSHANA SAMITHI,
K.P.NAGAR, PERINGOME, KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1.PERINGOME - VAYAKKARA GRAMA PANCHAYAT,
REPRESENTED BY THE SECRETARY,
PERINGOME - VAYAKKARA GRAMA PANCHAYAT,
P.O.PERINGOME, KANNUR DISTRICT.

2.PERINGOME - VAYAKKARA GRAMA PANCHAYAT,
BOARD REPRESENTED BY THE PRESIDENT,
PERINGOME - VAYAKKARA GRAMA PANCHAYAT,
P.O.PERINGOME, KANNUR DISTRICT.

3.RELIANCE INFO-COM LTD.,
REPRESENTED BY THE OFFICER IN CHARGE,
RELIANCE INFOCOM LTD., A & P ARCADE,
S.A.ROAD, KADAVANTHRA, KOCHI.

4.THE KERALA STATE POLLUTION CONTROL
BOARD, REPRESENTED BY THE MEMBER SECRETARY,
KERALA STATE POLLUTION CONTROL BOARD,
THIRUVANANTHAPURAM.

5.THE CHIEF ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
PAYYANNUR.

6.K.P.JANARDHANAN,
AGRICULTURAL OFFICER, KRISHI BHAVAN,
PERINGOME, P.O.PERINGOME, VIA PAYYANNUR,
KANNUR DISTRICT.

R1-R2 BY ADV. SRI.M.SASINDRAN
R3 BY ADV.SRI.V.G.ARUN
R4-R5 BY ADV.SRI.M.K.CHANDRA MOHANDAS,SC,POLL.C.BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.29981 of 2006

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Dated: 26th March, 2007

JUDGMENT

A resident of Peringome - Vayakkara Grama Panchayat in Kannur District challenges the move of the third respondent, the Reliance Info-com Ltd. to energise a mobile telephone tower in K.P.Nagar said to be a thickly populated area in Peringome on the ground that the emission of electro-magnetic radiation from the mobile telephone towers would result in health hazards and environmental hazards to the people around. The petitioner is in fact Convenor of the Arogya Samrakshana Samithi, K.P.Nagar, Peringome and the 1st respondent is the Peringome-Vayakkara Grama Panchayat and the 2nd respondent is its President. The 4th respondent is the Pollution Control Board and the 5th respondent is its Environmental Engineer. The 6th respondent is the Agricultural Officer of the Krishi Bhavan, Peringome. The petitioner states that the third respondent is attempting to install a mobile telephone tower in Peringome on a private property belonging to the 6th respondent. The tower it is alleged is going to be installed without conducting any enquiry with respect to the health/environmental hazards on account of its installation. The emission of electro-magnetic radiation from the tower will be of high intensity since the tower is having an enormous

capacity and will certainly result in extreme hazards to the neighbouring people. Ext.P1 is copy of the representation dated 26.7.2006 submitted by the petitioner to the President of the Panchayat. Ext.P2 is a mass petition dated 24.8.2006 to which there are 102 signatories. Ext.P3 is the letter dated 25.8.2006 issued by the Panchayat Secretary to the petitioner in which it is stated that nobody has so far approached the Panchayat. Ext.P4 is notice regarding meeting pursuant to Ext.P3. The petitioner alleges that it appears that the Panchayat has been subjected to pressure and temptations. Apprehending arbitrary action from the side of the Panchayat, the petitioner submitted representation dated 25.10.2006 before the President of the Panchayat and Ext.P5 is copy of that representation. The petitioner submits that presently even without obtaining licence from the Panchayat merely on the basis of the resolution by the Panchayat, the third respondent is continuing with the work for installation of the tower. This action is totally illegal and unauthorised. Respondents are bound to do the work only with permission from the Atomic Energy Commission. Ext.P6 is copy of a general order issued by the Ombudsman for Local Self Government Institutions in O.P.No.356 of 2006. Under Ext.P6 the Ombudsman directs the Local Authorities to insist on production of No Objection

Certificates from the Atomic Energy Commission by mobile telephone companies before they are permitted to install mobile telephone towers. It is submitted that the 4th respondent-Pollution Control Board has not issued any certificate to the petitioner. Ext.P7 is copy of request dated 25.10.2006 submitted to the Secretary of the Panchayat under the Right to Information Act, 2005 seeking information as to whether any licence has been given to the third respondent for installation of mobile tower in Peringome and also as to whether No Objection Certificate of the Atomic Energy Commission has been produced by the third respondent before the Panchayat and such other information. To Ext.P7 the Panchayat furnished Ext.P8 reply wherein it is stated that the Panchayat Committee has taken a decision on 11.10.2006. It is also stated in Ext.P8 that licence has not been issued in the prescribed form. The petitioner submits that so long as the Secretary has not granted licence, the Panchayat Board cannot pass a resolution to grant licence. Nor can the third respondent start construction of the tower on the basis of the resolution of the Panchayat. On the basis of Ext.P8 the petitioner has been given a copy of the resolution dated 11.10.2006 of the Panchayat. Ext.P9 is the same. The petitioner challenges Ext.P9 also under which licence is directed to be given to the third respondent

subject to the final judgment in the Writ Petition in which this court has stayed Ext.P6 order of the Ombudsman. The petitioner refers to a report in Desabhimani Daily dated 31.3.2005 by one Vinod Payam which says that children living in an area of 4 kms. away from the mobile tower have a high possibility of contracting leukemia. The petitioner submits that there is world wide concern in the matter of exposing human beings particularly children to the radio frequency of electro-magnetic radiation. The petitioner has produced Ext.P10 which is a study titled "A Cellular Phone Tower on Ossing High School?" down loaded from the inter-net a particular site in the inter-net. According to the petitioner, Ext.P10 is a comprehensive study and it says about the critical effects of cellular towers on biological issues. The adverse impact of cellular towers are causing health hazards such as development of brain cancer, childhood leukemia in children, decreased memory, increased blood pressure in healthy men, damage to eye cells. The petitioner then submits that K.P.Nagar is a thickly populated residential area and in Peringome Vayakkara Grama Panchayat there are areas where there are no human residents within a distance of about 5-8 kms. and states that the third respondent could have installed the tower in any one of those areas, namely, Koovapoyil, Mundranam etc. The petitioner

submits that he is ready and willing to show such places to the third respondent-company. On these averments the petitioner has raised several grounds and filed this Writ Petition seeking the following reliefs:

1. Issue a writ of certiorari quashing Ext.P9.

2. Declare that the third respondent is not entitled to install or to run a mobile phone tower in R.S.No.202/7 in Peringome Village or in any other residential area of Peringome Vayakkara Grama Panchayat.

3. Issue a writ of mandamus directing the 1st respondent to ensure that the third respondent is not installing or functioning or energising any mobile phone tower in R.S.No.202/7 of Peringome Village or in any other residential area of Peringome-Vayakkara Grama Panchayat.

4. Issue a writ of mandamus directing the respondents to shift the mobile phone tower to a non-residential area.

2. The third respondent-Company has filed a detailed counter affidavit. It is submitted that the Government of India under Section 4 of the Indian Telegraph Act has awarded a licence to the third respondent for providing basic telephone services in Kerala. Ext.R3(a) is copy of the relevant pages of the licence agreement and it is claimed that on the strength of the original of Ext.R3(a) the third respondent is entitled to establish, install, operate and maintain basic

telephone services on a non-exclusive basis in the service area of the Kerala Telecom Circle. The Government of India has subsequently granted licence for provision of unified access services to the third respondent. Ext.R3(b) is copy of relevant pages of the licence agreement. Ext.R3(c) is copy of the Government of India notification conferring powers of telegraph authority as provided under Section 4 of the Indian Telegraph Act upon duly authorised licensees/private basic telephone service operators. Ext.R3(d) is copy of the Government of India notification by which Cellular Telephone Service Operators were also brought within the definition of telegraph authority. By virtue of the said notification and the licence issued by the Government of India, the third respondent has got all the rights and privileges available to a telegraph authority under the Indian Telegraph Act. It is pointed out that in order to provide the services for which the third respondent has been awarded licence, it is necessary that the third respondent establishes a large number of Microwave Installations and Base Transceiver Stations (BTS) in various parts of Kerala. These are absolutely necessary for transmitting and receiving signals. Such BTS are installed and maintained by all telecom service providers including the state owned BSNL. It is as part of the said process of network coverage that the

third respondent is installing one such Base Transceiver Station at Peringome. The land for the above purpose has been taken on lease from the 6th respondent. The first respondent-Panchayat has not adopted the Municipality Building Rules and therefore there was no need for the third respondent to have obtained prior permission for construction of the telecom tower. Even then in order to assuage the public sentiments, the third respondent applied for permission from the Panchayat producing all necessary documents and obtained sanction from the Panchayat Committee. It is then submitted that neither the Panchayat Raj Act nor the Municipality Building Rules stipulate any minimum distance for construction of a telecommunication tower except when the tower is constructed near a defence area or a railway establishment. There is no restriction at all regarding construction of a telephone tower even over an existing building. In fact there is a specific provision in Chapter XIX of the Kerala Municipality Building Rules which permits construction/erection of telecom tower over buildings. The third respondent submits that having acquired the status of a telegraph authority under the Indian Telegraph Act, any person who is exercising a legal right in such a manner as is likely to cause damage to a telegraph line or post or to interrupt or to interfere with telegraphic communications has to give

one month's prior notice in writing of his intention to exercise such right. Section 33 of the Indian Telegraph Act makes it obligatory on the part of the State Government to prevent anybody causing or likely to cause wrongful damage to any telegraph, by deployment of additional forces. No prior notice has been issued to the third respondent and the Government is bound to prevent interference with the third respondent's activities by deploying sufficient police force. The counter affidavit then proceeds to state that the apprehension expressed in the Writ Petition that Base Transceiver Stations (Mobile Towers) pose health hazards is without any basis and is the result of ignorance about the functioning of the BTS towers. Ext.R3(e) chart showing a comparison between EMR from molbile base stations and other sources of radio frequency is relied on and it is submitted that experiments conducted in and around BTS towers at points where the public is likely to be exposed have proven that emission at these points are 150,000 times below the level at which significant heating can occur. It is also pointed out that EMR is non-ionising radiation which means that it is not able to directly impart enough energy to a molecule or atom to break chemical bonds or remove electrons. It is stated that on the contrary, ionising radiation such as X-rays can strip electrons from atoms and

molecules thereby causing lmolecular changes which can lead to damage in biological tissue. The Atomic Energy Regulatory Board has reported before the Bombay High Court that radio frequency waves emanating from mobile phones are not covered under the definition of 'radiation' as given in the Atomic Energy Act and are only non-ionising radiations without the capability to ionize the matter with which they interact. Ext.R3(f) dated 6.10.2004 is copy of the report submitted by the Atomic Energy Regulatory Board before the Bombay High Court. It is also pointed out that as per clause 2.2(d)(i) of the licence agreement the third respondent is permitted to provide service only by utilising the type of network equipment that meets the relevant standards fixed by International Telecommunication Union(ITU)/Telecommunication Engineering Centre(TEC) and other international standardisation bodies. Reference is made to the Division Bench judgment of this court in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** (2006(4) KLT 695) wherein it is held that permission granted by the Panchayat for construction of a telecom tower cannot be attacked on the ground that it poses health hazard. Ext.P10 is an unauthenticated document which cannot be accepted in evidence. The site from which Ext.P10 is down loaded stores unauthenticated articles which can be down loaded for a fee.

The host site does not take the responsibility for the articles posted on that site. A disclaimer has been published by the host site itself. Ext.P10 does not even have the authenticity of a newspaper report. The counter affidavit has also produced a copy of the report submitted by the World Health Organisation as Ext.R3(g) which shows that there is no evidence regarding the adverse impact on human beings caused by transmission towers.

3. Very elaborate submissions were addressed before me by Mr.Kaleeswaram Raj, counsel for the petitioner and Mr.V.G.Arun, counsel for the third respondent. My attention was drawn by the counsel to the pleadings as well as various documents placed on record. Mr.Kaleeswaram Raj would refer to various judicial precedents such as **M.C.Mehta v. Union of India** (AIR 1988 S.C. 1037), **Vellore Citizens Welfare Forum v. Union of India** (AIR 1996 S.C. 2715), **M.C.Mehta v. Union of India** (AIR 1997 S.C. 734), **Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha and Others** [(2001) 4 S.C.C. 448], **Central Board of Dawoodi Bohra Community v. State of Maharashtra** [(2005) 2 S.C.C. 673], **Samaruddin v. Asst. Director of Enforcement** [1999 (2) KLT 794 (F.B.)] and (2002) 7 S.C.C.(Journal) page 1. Mr.Arun per contra would place strong reliance on the judgment of the

Division Bench of this court in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** (supra). Mr.Kaleeswaram Raj in his submissions drew my attention to Sections 233, 276, 236 of the Panchayat Raj Act while Mr.Arun would refer to the definition of building under the Kerala Municipality Building Rules (Chapter XIX) and also Rules 131 and 140A.

4. Having considered the rival submissions addressed before me in the light of the various documents placed on record and having examined the ratio emerging from the various decisions cited at the Bar, I am of the view that this court will not be justified in granting relief to the petitioner. The judgment of the Division Bench of this court in Reliance **Infocom Ltd. v. Chemanchery Grama Panchayat** (2006(4) KLT 695) is a direct precedent which decides the issue against the petitioner. Ext.R3(f) revealing the stand taken by the Atomic Energy Regulatory Board of the Government of India before the Bombay High Court will show that the insistence of the Ombudsman in Ext.P6 order that providers of mobile telephone services shall produce no objection certificate from the Atomic Energy Commission before they are permitted by the local authorities to install their mobile towers was unwarranted. Exts.R3(f) and R3(g) are authentic and responsible materials unlike Ext.P10 which is an article

downloaded from the inter-net for which even the host site does not own responsibility. The only request which could have been considered is the request of the petitioner that in some other uninhabited area within the Panchayat itself and not in K.P.Nagar area the tower should be located. But then I am not inclined to issue any directions in that regard also in view of the facts disclosed by the detailed statements dated 18.2.2007 which has been filed by the counsel for the third respondent pursuant to a direction by me to explore the possibilities of such a shifting. The Writ Petition accordingly will stand dismissed. There will be no order as to costs.

srd **PIUS C.KURIAKOSE, JUDGE**